

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Date of decision: 12.06.2006

Criminal Appeal No. 1281 of 2001
(Old No. 1442 of 1987)

Labha
S/o Darshan Singh
R/o Mohalla Bhatra
P.S. Kotwali, Dehradun.

.....Appellant

Versus

State of Uttaranchal

.....Respondent

Mr. Pankaj Miglani, Advocate for the appellant.
Mr. H.C. Pande, Additional Government Advocate for the State

A.F.R. (Approved for Reporting)
Not approved for Reporting

Initials of Judges

Date: 12.06.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

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Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Per: Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (herein-after for brevity referred as Cr.P.C.), is directed against the judgment and order dated 24.04.1987, passed in Sessions Trial No. 16 of 1986 by the then learned Sessions Judge, Dehradun, whereby appellant Labha has been convicted and sentenced under Section 302 of Indian Penal Code, 1860 (herein after referred as I.P.C.), to imprisonment for life.

2. Prosecution story in brief is that on 31.10.1985, at about 9:00 P.M., P.W. 1 Amar Singh, the informant was coming along with P.W. 4 Jeet Singh from market to his

house in Mohalla Bhatra, Kanwali Road, Dehradun. When Amar Singh (P.W.1) reached near Gurudwara, he saw his son Umra (deceased) standing there with accused Multana, Labha and Ranjit. They were quarrelling over repayment of Rs. 5 due from Multana to Umra. Accused Multana started hurling abuses at Umra. Meanwhile, accused Smt. Bachni, mother of accused Labha, arrived there and said “UMRA DO KAUDI KA LADKA HAI. ISKO MITTI MAN MILA DO. MAIN ISKE EENT SE EENT BAJA DUNGI”. Thereafter accused Multana and Ranjeet, got hold of Umra and accused Labha drew big knife and inflicted 3 – 4 blows on Umra. Injured Umra rushed towards his house pressing his abdomen by hand. However, he could not run too far and fell down. According to the prosecution story, the incident was also witnessed by P.W. 7 Bisra Singh @ Birkha. A tubelight was lighted from the electric pole on the road where the incident took place. Amar Singh (P.W. 1) and Jeet Singh (P.W. 4), took him to the hospital, where doctor declared him dead. Amar Singh (P.W. 1), lodged the oral First Information Report on the very day at 10:40 P.M. in Police Station- Dehradun, which was recorded by Anand Pal Singh, Head Constable (P.W. 3) against the appellant Labha for alleged offence, punishable under Section 302, 120 B of I.P.C., who prepared check report (Ext. A-1). Head Constable Jagdish Prasad (P.W.5), made necessary entry in the General Diary (Ext. A-5). Sub-Inspector Rajbir Singh (P.W. 8), the Investigating Officer proceeded for investigation. On 01.11.1985, the Investigating Officer (P.W. 8) took the dead body in his possession and prepared the inquest report (Ext. A-2) and

also prepared other connected papers- Memo of recovery of soil (Ext. A-3), sketch of the dead body (Ext. A-10), police form Mo. 33 (Ext. A-11), and letter to Chief Medical Officer, Dehradun (Ext. A-12), requesting for post mortem examination. Dr. Ajay Kala (P.W. 2), on 01.11.1985 at 4:00 P.M., conducted autopsy on the dead body and prepared post mortem examination report (Ext. A-4). Following ante mortem injuries were found on the dead body by said Medical Officer:-

- 1. Punctured wound with clean cut margins 4cm X 1 ½ cm X heart cavity deep, cutting the 6th rib pleura and apex of peri cardium and heart. 100 ml of blood in pericardial cavity, on the left side of front of chest 6 cm below the left nipple, 1 ½ cm away from nipple line.**
- 2. Incised wound 2 ½ cm X 1cm X 1cm deep as the outer part of back 5 cms below the posterior axillary fold.**
- 3. Punctured wound with clean cut margins 5cm X 2cm X 7cm deep on the back of chest directed upwards and anteriorly cutting the muscles of back, intercoastal muscles, pleura and piercing 2cm in the left upper lobe of lung in its lower part.**

**A litre of fluid blood found in
the thoracic cavity**

In the opinion of Medical Officer, who conducted the post mortem examination, the cause of death was shock and haemorrhage as a result of ante mortem injuries.

3. After recording statements of the witnesses, the Investigating Officer also prepared the Site Plan (Ext. A - 9). He submitted charge sheet (Ext. A-14) against all the accused/appellants- Ranjit Singh, Labha, Multana and Bachni on 20.11.1985. The concerned Magistrate after giving necessary copies to the appellant, as required under Section 207 of Cr.P.C., committed the case to the court of Sessions for trial of the accused. The learned Sessions Judge, after hearing the prosecution and the defence, framed charge of offence punishable under Section 302 I.P.C. against the appellant Labha that he committed murder of Umra on 31.10.1985 at about 9:00 P.M. in Mohalla Bhatra, Kanwali Road, Dehradun. The accused/appellant Labha, pleaded not guilty and claimed to be tried. Charge of offence punishable under Section 302 read with Section 34 of I.P.C. was framed against other accused persons namely Bachni, Ranjeet and Multana. They too pleaded not guilty and claimed to be tried. Where after, before the trial court, prosecution got examined P.W. 1 Amar Singh- Informant, P.W. 2 Dr. Ajay Kala- who conducted the post mortem examination, P.W. 3 Anand Pal Singh (Head Constable), P.W. 4 Jeet Singh- eye witness, P.W. 5 Jagdish Prasad (Head Constable), and P.W. 6 Home Guard Vijay Kumar, P.W. 7 Bisra Singh- eye witness, P.W. 8 Sub-Inspector Rajbir

Singh (Investigating Officer) and P.W. 9 Ombir Singh-S.S.I. (The Investigating Officer who submitted the charge sheet). All oral and documentary evidence was put to the accused persons by the trial court, as required under Section 313 of Cr.P.C. in reply to which, they submitted that they have been falsely implicated in the crime on account of enmity. Learned Sessions Judge, after hearing both the sides, found the accused Labha guilty of offence punishable under Section 302 of I.P.C. and accordingly convicted him. And after hearing him on sentence, learned Sessions Judge, sentenced him to imprisonment for life. Aggrieved by said judgment and order dated 24.04.1987, this appeal was filed by the convict before the Allahabad High Court on 05.05.1987. The appeal is received by this Court under Section 35 of U.P. Reorganisation Act, 2000, for its disposal, from said High Court. (The other accused persons Bachni, Multana and Ranjeet were acquitted by the trial court on the ground that prosecution failed to establish if they had common intention with the appellant in commission of murder of the deceased).

4. We heard learned counsel for the appellant and learned Additional Government Advocate and perused the entire record.

5. P.W. 1 Amar Singh, is an eye-witness and informant who lodged the oral First Information Report. He has stated that deceased (Umra) was his son. He further states that on the day of the incident, he along with Jeet Singh (P.W. 4), was coming from market to his

house in Mohalla Bhatra, Kanwali Road, Dehradun. When he reached near Gurudwara, he saw his son Umra (deceased) standing there with accused Multana, Labha and Ranjit. They were quarrelling over repayment of Rs. 5 due from Multana to Umra. Meanwhile accused Smt. Bachni, mother of accused Labha, arrived there and said "UMRA DO KAUDI KA LADKA HAI. ISKO MITTI MAIN MILA DO. MAIN ISKI EENT SE EENT BAJA DUNGI." Thereafter, accused Multana and Ranjeet, got hold of Umra and accused Labha drew big knife and inflicted 3-4 blows on Umra. Injured Umra rushed towards his house pressing his abdomen by hand. However, he could not run too far and fell down. On seeing his son in an injured condition, Amar Singh (P.W. 1) and Jeet Singh (P.W. 4) took him to the hospital, where doctor declared him dead. He has further stated that Jeet Singh (P.W. 4) is the son of his sister.

6. P.W. 4 Jeet Singh is also an eye witness of the incident. He has stated that deceased (Umra) was his maternal uncle's (P.W. 1 - Amar Singh's) son. He further states that on 31.10.1985 at about 9:00 P.M. he along with Amar Singh (P.W.1) was returning from market. When they reached near Gurudwara, he saw that Labha, Ranjit Singh, Multana and Umra (deceased), were quarrelling over repayment of Rs. 5 due from Multana to Umra. Meanwhile, accused Smt. Bachni, mother of accused labha, arrived there and exhorted him against the deceased. Ranjit and Multana, caught hold of Umra while Labha drew big knife and inflicted blows on Umra. He further states that he and Amar Singh (P.W. 1) started

shouting. On this, all the four accused ran away. Injured Umra rushed towards his house and fell down on the road. There was tubelight lighted from the electric pole. He has further stated that he and Amar Singh (P.W. 1) took Umra to the hospital, where doctor declared him dead.

7. P.W. 2 Dr. Ajay Kala, who conducted post mortem examination on the dead body on 01.11.1985 at 4:00 P.M, has stated that he found as many as three ante mortem injuries (quoted above) and prepared the post mortem examination report (Ext. A-4). Ante mortem injury No. 1 to 3 corroborates the prosecution story that death of the deceased could have been caused by pointed sharp edged weapon. The Medical Officer has opined that cause of the death was shock and haemorrhage as a result of ante mortem injuries.

8. On behalf of the appellant, it is argued that both the witnesses Amar Singh (P.W. 1) and Jeet Singh (P.W. 2), who have stated that they had gone to market to purchase certain articles but no such articles were found at the place of occurrence nor the same were deposited at the police station or shown to the Investigating Officer. We are unable to agree with the argument advanced by the learned counsel for the appellant. Amar Singh (P.W. 1) has stated that he did not remember as to where he had left the said articles because he was in a hurry to take his son (deceased) to the hospital and it is not expected of him to take care of articles purchased while taking his son to the hospital. In such circumstances, a reasonable

person would not be mindful of such petty articles at a time when he was anxious to save the life of his son.

9. Sri Pankaj Miglani learned counsel for the appellant, contended that motive alleged by prosecution was disbelieved by the trial court, and still appellant was convicted. We see no force in the contention as the trial court has rightly pointed out that where there is eye witness account of the incident, motive loses its importance. Since the evidence of P.W. 1 Amar Singh and P.W. 4 Jeet Singh is natural and trustworthy, the quarrel arisen even out of mole, could have been sufficient to enrage the appellant to commit murder particularly when he was armed with deadly weapon.

10. It is also submitted on behalf of the appellant that the statements of eye witnesses has been disbelieved by the trial court as against the accused Bachni, Multana and Ranjeet while the same has been believed against the appellant Labha. It is further submitted in this connection that this approach of the trial court is erroneous in law. In our opinion the submission is misconceived for the reason that it is the duty of the court to separate grain from the chaff. At times it is necessary for the Court to see to what extent there is embroidery in the statement of witnesses. Apart from this, the ground on which accused Bachni, Multana and Ranjeet are acquitted is that their common intention with the appellant Labha in commission of murder was not established.

11. Sri Miglani, on behalf of appellant also drew our attention to the fact that according to post mortem report (Ext. A-4), the death had occurred about 1 ¼ day before autopsy. In this connection, it is further pointed out that murder had taken place in the noon not in the evening. Here, we feel that court cannot ignore the fact that Medical Officer conducting autopsy is not an eye witness and in making guess work on the basis of condition of the dead body, there can be either way variation of six hours.

12. It is also argued by the learned counsel for the appellant that the eye witnesses P.W. 1 and P.W. 4 are relatives of deceased and their evidence should not have been believed by the trial court. It is settled principle of law that evidence of witnesses who are relatives of deceased cannot be discarded merely on the ground that they are relatives unless otherwise their evidence is not trust worthy. Presence of witnesses Amar Singh, father of the deceased and that of P.W. 4 Jeet Singh is natural at the place of incident as they are resident of same locality where the crime was committed. These witnesses would be the last persons to implicate innocent person leaving real culprits. Also from the evidence on record there appears no enmity of these witnesses with the appellant Labha.

13. It is also contended on behalf of the appellant that P.W. 1 Amar Singh in his statement has stated that all the blows of knife were given from the front side. But injury No. 2, mentioned as ante mortem injury, shows that the

said injury was on the outer part of the back, 5 cms below the posterior axillary fold. We have scrutinized the evidence from the angle raised on behalf of the appellant. Had there been no injury found on the front side, it could have been argued that the witness might have not seen the occurrence. But in the present case, there is injury, for example injury No. 1, recorded as ante mortem injury in the post mortem report, which shows that there was punctured wound with clean cut margin on the left side of front chest. As such, if more than one blow of knife is given, one after another, it is difficult for a witness to describe on which part the each blow landed. Therefore, we do not see any reason to discard or disbelieve the prosecution story on the above ground contended on behalf of the appellant.

14. It is also brought to our notice on behalf of the appellant that the source of light is not mentioned in the First Information Report- Ext. A-1 and on its basis it is argued that the prosecution story is doubtful. We do not find any substance in this argument as, the incident has taken place in a city not in the village. The light of electricity is normally there in the city. P.W. 1 Amar Singh and P.W. 4 Jeet Singh have not only made statement on oath before the trial court that there was light of tubelight on the road from electric pole. There is mention of this fact also in the statements recorded under Section 161 of Cr.P.C. by Investigating Officer. As such mere non-mention of said fact in First Information Report, in our opinion, does not make any difference in the present case.

15. Lastly, it is submitted by the learned counsel for the appellant that assuming for a moment what eye-witnesses P.W. 1 Amar Singh and P.W. 4 Jeet Singh, have stated is true, even then the offence made out as against the appellant is covered under Exception 4 to Section 300 of Indian Penal Code. Exception 4 to Section 300 of Indian Penal Code, provides that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Had there been a single blow of knife, probably we could have accepted that the act on the part of the appellant was not cruel but three knife blows one after another on the vital parts of the deceased is definitely a cruel act on the part of the appellant, which ultimately resulted in the death of the deceased. In such circumstances, we are of the view that Exception 4 to Section 300 of Indian Penal Code cannot be said to be attracted in the present case.

16. From the above discussion of evidence, we are of the view that the trial court has rightly found that the prosecution has been successful in proving the charge framed against the accused Labha (appellant) that he has committed murder of Umra. As such, we see no error of fact or that of law in the impugned judgment and order passed by learned Sessions Judge, Dehradun. Accordingly, the appeal is liable to be dismissed. The same is dismissed. The appellant is on bail. His bail is

cancelled. He shall be taken into custody by the court concerned to serve out the sentence awarded against him.

(Prafulla C. Pant, J.) (Rajeev Gupta, C.J.)

Dt: 12.06.2006

Sweta